

RECEIVED
FEDERAL ELECTION
COMMISSION

1
2009 AUG 14 PM 1:05

3
4 CELA

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

5 FIRST GENERAL COUNSEL'S REPORT

6
7 MUR: 6171

8 DATE COMPLAINT FILED: February 4, 2009

9 DATE OF NOTIFICATION: February 10, 2009

10 LAST RESPONSE RECEIVED: March 11, 2009

11 DATE ACTIVATED: May 26, 2009

12
13 EXPIRATION OF STATUTE OF LIMITATIONS:
14 October 14, 2013/ November 14, 2013

15
16 COMPLAINANT:

Michigan Republican Party

17
18 RESPONDENTS:

Kalamazoo County Democratic Party Federal
Committee and Carolyn E. Cardwell, in her
official capacity as treasurer
Cooney for Congress Committee and Robert
Snyder, in his official capacity as treasurer

19
20
21
22
23
24 RELEVANT STATUTES:

2 U.S.C. § 432(c)(2)

2 U.S.C. § 434

2 U.S.C. § 441a(a)

11 C.F.R. § 102.9(a)

11 C.F.R. § 110.4(c)

25
26
27
28
29
30 INTERNAL REPORTS CHECKED:

Disclosure Reports

31
32 FEDERAL AGENCIES CHECKED:

None

33
34 MUR: 6172

35 DATE COMPLAINT FILED: February 4, 2009

36 DATE OF NOTIFICATION: February 11, 2009

37 LAST RESPONSE RECEIVED: March 1, 2009

38 DATE ACTIVATED: May 26, 2009

39
40 EXPIRATION OF STATUTE OF LIMITATIONS:
41 October 20, 2013/January 31, 2014

42
43 COMPLAINANT:

Michigan Republican Party

10044261527

RESPONDENTS: Allegan County Democratic Committee¹
Cooney for Congress Committee and Robert
Snyder, in his official capacity as treasurer

RELEVANT STATUTES: 2 U.S.C. § 431
2 U.S.C. § 433(a)
2 U.S.C. § 434
11 C.F.R. § 102.1(d)
11 C.F.R. § 104.5(f)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

On February 4, 2009, the Michigan Republican Party filed two complaints, each naming the same Federal candidate's authorized committee but separate Michigan county political party committees as the respondents. In MUR 6171, the complaint alleges that the Kalamazoo County Democratic Party Federal Committee and Carolyn Cardwell, in her official capacity as treasurer, ("KCDP") reported in its 2008 Post-General Election Report the receipt of \$11,214.35 in anonymous cash contributions without properly indentifying or attempting to ascertain the names of the contributors in violation of 11 C.F.R. § 110.4(c)(3), and that these contributions may not have complied with the source prohibitions and contribution limits of the Federal Election Campaign Act of 1971, as amended (the "Act"). The complaint further alleges that the Cooney for Congress Committee and Robert Snyder, in his official capacity as treasurer, ("Cooney Committee") accepted \$5,000 in contributions from KCDP that that may not have not been federally compliant. The Cooney Committee is the principal campaign committee of Don Cooney, a 2008 federal candidate for Michigan's 6th Congressional District for the U. S. House

¹ While the response states the respondent is the Allegan County Democratic Committee, it is on Allegan County Democratic Party letterhead, the attached copy of the refund check attached is made out to that entity, and it appears the titles "Committee" and "Party" may be used interchangeably by the organization.

1 of Representatives. The KCDP responded that the anonymous contributions all came from
2 persons who contributed cash amounts less than \$50 from suggested donations for merchandise.
3 The Cooney Committee responded that the KCDP is not a prohibited source, it does not have
4 knowledge of the KCDP's fundraising efforts, and it properly reported the \$5,000 contributions.

5 There is no information to support that KCDP's cash contributions or its \$5,000
6 contributions to the Cooney Committee came from prohibited sources and they appear to have
7 been properly reported. Therefore, we recommend that the Commission find no reason to believe
8 that the KCDP and Cooney Committee violated the Act, and close the file.

9 In MUR 6172, the complaint alleges that the Allegan County Democratic Committee
10 ("ACDC") made two \$1,000 contributions to the Cooney Committee in October 2008, but failed
11 to register and file reports with the Commission within 10 days of acquiring political committee
12 status. The complaint further alleges that the Cooney Committee never reported the ACDC's
13 second \$1,000 contribution. The ACDC responded that upon receiving the complaint, it
14 contacted the Cooney Committee, which refunded the second \$1,000 contribution and brought
15 the ACDC under the amount which would have required it to register with the Commission as a
16 political committee. According to the Cooney Committee's response, it had tried to return that
17 contribution earlier, but was unable to contact the ACDC's treasurer at that time. However, it
18 kept at least a \$1,000 balance in its account "in full anticipation of returning the contribution."
19 MUR 6172 Cooney Committee Response at 1. The Cooney Committee further responded that it
20 was unable to report the second \$1,000 contribution because it was "thwarted by the FEC's filing
21 software." *Id.*

22 While it appears that the ACDC exceeded the registration and reporting threshold by
23 \$1,000, the Cooney Committee refunded that amount and brought the ACDC below the

1 threshold. In addition, while the Cooney Committee failed to file a 48-Hour Report of
2 Contribution for the second \$1,000 contribution and failed to report it in its 2008 Post-General
3 Election Report, it appears it always intended to refund the contribution, and did so.
4 Accordingly, we recommend that the Commission exercise its prosecutorial discretion and
5 dismiss the complaint in MUR 6172, include a cautionary notification, and close the file.

6 **I. FACTUAL AND LEGAL ANALYSES**

7 **A. MUR 6171**

8
9 **1. Factual Summary**

10 The complaint states that in its 2008 Post-General Report, the KCDP reported a total of
11 \$11,214.35 in anonymous cash contributions received on seven separate occasions between
12 October 14 and November 14, 2009, and alleges that the KCDP either knew or should have
13 known the identity of the contributors. The complaint cites to Advisory Opinion 1991-20 (Call
14 Interactive) for the proposition that contributions are "not 'anonymous' contributions for the
15 purposes of 11 C.F.R. 110.4(c)(3)" if the contributors' identities are able to be determined, and
16 alleges that the contributions may have come from sources not in compliance with the
17 prohibitions and limitations of the Act. MUR 6171 Complaint at 1. The complaint further
18 alleges that because the KCDP contributed a total of \$5,000 to the Cooney Committee between
19 October 18 and October 31, 2008,² the funds used to contribute to, and accepted by, the Cooney
20 Committee may not have been federally compliant in violation of the Act and 11 C.F.R. § 110.9.

21 The KCDP responded that it received many anonymous cash contributions through
22 "suggested donations" for Barack Obama merchandise that it bought and brought to its

² Commission filings show the KCDP made, and the Cooney Committee accepted, three separate contributions in October 2008 totaling \$5,000: \$1,000 on October 18, \$1,700 on October 22, and \$2,300 on October 31.

10044261530

1 headquarters, including t-shirts (\$10), yard signs (\$5), buttons (\$3) and bumper stickers (\$1), and
2 that it was not required to collect identifying information on contributors of less than \$50,
3 including those who made "suggested donations" for merchandise. KCDP Response at 1. The
4 KCDP also states that it made a \$5,000 contribution, the maximum amount allowed, to the
5 Cooney Committee, and reported that information. *Id.* The Cooney Committee responded that it
6 received the contribution, which it states is the maximum amount allowed by law, and asserts
7 that the KCDP is not a prohibited source and it has "no knowledge of the KCDP's fundraising
8 efforts." Cooney Committee Response at 1.

9 **2. Legal Analysis**

10 There do not appear to be violations of the Act concerning the amounts, sources or
11 reporting of the contributions. Political committees are required to keep an account of the name
12 and address of person who makes any contribution in excess of \$50, together with the date and
13 amount of any such contribution. 2 U.S.C. § 432(c)(2). The KCDP states in its response that it
14 did not accept \$50 or more from any contributor, and we have no information to the contrary.
15 Further, the KCDP's aggregating of a number of anonymous contributions under \$50 for
16 reporting purposes appears to be in compliance with 11 C.F.R. 102.9(a). *See* MUR 5560 (Case
17 for Congress) FGCR at 8 (citing AOs 1981-48 (Muskegon Republicans) and 1980-99
18 (Republican Roundup)).

19 While the complaint cited AO 1991-20 (Call Interactive) for the proposition that a
20 contribution is not anonymous if the contributor can be identified, that AO is distinguishable
21 because it involved a 900 telephone call service to be used for soliciting and collecting
22 contributions under \$50. The Commission in AO 1991-20 stated that the circumstances
23 presented were different than in AOs 1981-48 (Muskegon Republicans) and 1980-99

10044261531

1 (Republican Roundup) in that, unlike donors attending an event and making small contributions
2 in person, there was a danger that callers could easily make a large number of small contributions
3 by making numerous calls using the Call Interactive service which, when aggregated, could
4 exceed individual contributions limits, and that the technology existed to be able to identify
5 contributors using the service. The situation in this matter is more analogous to that in AOs
6 1981-48 and 1980-99, which involved more limited person-to-person contact with the
7 contributors, than to AO 1991-20.

8 There is no information that the KCDP accepted contributions over \$50 that were not
9 properly reported or that any of the contributions came from prohibited sources. Without context
10 or any other specific facts, this allegation is merely speculative and does not provide a sufficient
11 threshold to support reason to believe findings. See Statement of Reasons of Commissioners
12 Mason, Smith, Sandstrom and Thomas in MUR 44960 (Hillary Rodham Clinton, issued Dec. 21,
13 2000). There is also no information, other than mere speculation by the complainant, that
14 contributions that the Cooney Committee received from the KCDP came from a prohibited
15 source. See *id.* Moreover, the KCDP, as a multicandidate committee, could legally contribute
16 \$5,000 to the Cooney Committee. See 2 U.S.C. § 441a(a)(2)(A); 11 C.F.R. §§ 110.2(a)(2)(b),
17 110.3(b)(3). Accordingly, we recommend that the Commission find no reason to believe that the
18 KCDP and Cooney Committee violated the Act, and close the file.

19 **B. MUR 6172**

20 **1. Factual Summary**

21 The complaint alleges that the ACDC contributed \$1,000 to the Cooney Committee on
22 October 1, 2008, and another \$1,000 on October 20, 2008, for a total contribution amount of
23 \$2,000 during 2008, but failed to register as a political committee and file reports with the

1 Commission within 10 days of acquiring political committee status. The complaint further
2 alleges that the Cooney Committee never reported the October 20, 2008, contribution from the
3 ACDC.

4 The ACDC responded that upon receiving the complaint, it contacted the Cooney
5 Committee, which returned the second \$1,000 contribution and brought the ACDC under the
6 amount which would have required it to register with and report to the Commission as a political
7 committee. The ACDC also states it was "very sorry" that, due to its "inexperience," "over
8 enthusiasm," and failure to review the "contribution rules one last time," it violated the Act; it
9 maintains it is now "properly educated" about the rules. ACDC Response at 1. A copy of the
10 refund check and affidavit from the ACDC's treasurer is attached to the response.

11 The Cooney Committee response states it tried to return the second \$1,000 contribution
12 upon its receipt, but was unable to contact the ACDC's treasurer, who was on vacation. The
13 Cooney Committee states it then tried to report the second contribution, but was unable to do so
14 because the Commission's software "does not allow a State Committee ID number to be used."
15 Cooney Committee Response at 1. The Cooney Committee did not elaborate, but it was
16 evidently able to report the first \$1,000 contribution and the eventual refund of the second \$1,000
17 contribution. The Cooney Committee claims it used its "best efforts" to contact the ACDC's
18 treasurer and kept enough of an account balance to be able to refund the second contribution
19 from late 2008 through February 2009. The Cooney Committee states that the ACDC's treasurer
20 finally contacted it on February 21, 2009, which is supported by the ACDC response, and the
21 second contribution was refunded shortly thereafter.

22 The Cooney Committee reported the receipt of the first contribution in its original and
23 amended 2008 October Quarterly Reports, but never reported the receipt of the second

1 contribution. It reported the refund of the second contribution as being made on February 22,
2 2009, in its 2009 April Quarterly Report. There is no record of the Cooney Committee filing a
3 48-Hour Report of Contribution for the October 20, 2008, contribution.

4 **2. Legal Analysis**

5 The ACDC, which is listed as a "local party" on the Michigan State Democratic Central
6 Committee ("MSDCC") website, appears to be a "local committee of a political party" of the
7 MSDCC. 11 C.F.R. § 100.14(b) (A local party committee is one that, by virtue of a political
8 party's bylaws, "is part of the official party structure, and is responsible for the day-to-day
9 operation of the political party . . ." at the local level). Any local committee of a political party
10 which "makes contributions [for the purpose of influencing a federal election] aggregating in
11 excess of \$1,000 during a calendar year" meets the threshold definition for a political committee.
12 2 U.S.C. §§ 431(4)(C), (8)(A)(i); 11 C.F.R. §§ 100.5(c), 100.14(b), 100.52(a). Political
13 committees must file a Statement of Organization with the Commission within 10 days of
14 meeting the threshold definition found in 2 U.S.C. § 431(4)(C), and must thereafter file reports
15 that comply with 2 U.S.C. § 434. 2 U.S.C. §§ 433(a), 434(a)(1); *see also* 11 C.F.R. §§ 102.1(d),
16 104.1. Political committees, including authorized candidate committees, must report all
17 contributions and refunds of contributions. 2 U.S.C. § 434(b)(2), (4); 11 C.F.R. § 104.3. The
18 ACDC's contributions to the Cooney Committee exceeded \$1,000 in a calendar year, but it did
19 not file a Statement of Organization or any reports with the Commission in 2008. Thus, it
20 appears that the ACDC violated 2 U.S.C. §§ 433(a) and 434(a)(1).

21 The Cooney Committee was required to report all contributions received, and to file 48-
22 hour notices of all contributions of \$1,000 or more that it received after the 20th day before, but
23 more than 48 hours before, a federal election. 2 U.S.C. §§ 434(a)(6)(A), 434(b)(2)(C), (I);

1 11 C.F.R. § 104.5(f). The Cooney Committee failed to report the second \$1,000 contribution
2 from the ACDC and to file a 48-Hour Report of Contribution for the October 20, 2008,
3 contribution.³ Therefore, it appears that the Cooney Committee violated 2 U.S.C.
4 §§ 434(a)(6)(A) and (b)(2)(C).⁴

5 Despite the apparent violations by the ACDC and the Cooney Committee, we do not
6 believe that further pursuit of MUR 6172 would be a good use of the Commission's limited
7 resources. While it appears that the ACDC exceeded the registration and reporting threshold by
8 \$1,000, the money was refunded, albeit several months later, and this refund brought the ACDC
9 below the registering and reporting threshold. The Cooney Committee failed to file a 48-Hour
10 Report of Contribution concerning the ACDC's second \$1,000 contribution and failed to report
11 the contribution in its 2008 Post-General Election Report, but it appears to have always intended
12 to refund it and did so, and it properly reported the refund. Accordingly, we recommend that the
13 Commission exercise its prosecutorial discretion and dismiss the complaint in this matter, send a
14 cautionary letter, and close the file. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

15 **III. RECOMMENDATIONS**

16 **A. MUR 6171**

- 17
18 1. Find no reason to believe that the Kalamazoo County Democratic Party Federal
19 Committee and Carolyn Cardwell, in her official capacity as treasurer, and
20 Cooney for Congress Committee and Robert Snyder, in his official capacity as
21 treasurer, violated the Act.
22
- 23 2. Approve the attached Factual and Legal Analyses.

³ Despite the Cooney Committee's claim that it was "thwarted by the FEC's reporting software" because it did not allow a state committee identification number to be used, Cooney Committee Response at 1, according to the Reports Analysis Division, the state number has no bearing on the reporting of contributions using the Commission's reporting software and the Cooney Committee could have just left the space for the identification number blank.

⁴ An RFAI (RQ-2) dated December 24, 2008, mentions the Cooney Committee's failure to file three other 48-Hour Reports of Contribution totaling \$4,300 during October 2008.

MUR 6171/MUR 6172
First General Counsel's Report

3. Approve the appropriate letters.

4. Close the file.

B. MUR 6172

1. Dismiss the complaint against the Allegan County Democratic Committee and Cooney for Congress Committee and Robert Snyder, in his official capacity as treasurer, and send a cautionary letter.

2. Approve the attached Factual and Legal Analyses.

3. Approve the appropriate letters.

4. Close the file.

Thomasenia P. Duncan
General Counsel

8-14-09
Date

BY: Kathleen Guith
Kathleen Guith
Deputy Associate General Counsel
For Enforcement

Susan L. Lebeaux
Susan L. Lebeaux
Assistant General Counsel

J. Cameron Thurber
J. Cameron Thurber
Attorney